

WHYTE HIRSCHBOECK DUDEK S.C.
555 East Wells Street
Suite 1900
Milwaukee, WI 53202-3819
Telephone: (414) 273-2100
Facsimile: (414) 223-5000
Bruce G. Arnold, Esq.
Daryl L. Diesing, Esq.
Daniel J. McGarry, Esq.

BAKER & HOSTETLER LLP
45 Rockefeller Plaza
11th Floor
New York, NY 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
Richard J. Bernard, Esq.
and
Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5304
Telephone: (202) 861-1500
Facsimile: (202) 861-1783
Donald A. Workman, Esq.

Attorneys for Metavante Corporation

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|--------------------------------|---|-------------------------|
| In re: |) | |
| |) | Chapter 11 |
| |) | |
| LEHMAN BROTHERS HOLDINGS INC., |) | Case No. 08-13555 (JMP) |
| <i>et al.</i> , |) | |
| |) | (Jointly Administered) |
| Debtors. |) | |
| |) | |

**DESIGNATION OF ITEMS TO BE INCLUDED IN RECORD ON APPEAL AND
STATEMENT OF ISSUES TO BE PRESENTED**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, Metavante Corporation (“Metavante”) hereby submits this Designation of Items to be Included in the Record, and Statement of Issues to be Presented in Its Appeal to the United States District Court for the Southern District of New York from the Order Pursuant to Sections 105(a), 362 and 365 of the Bankruptcy Code to Compel Performance of Contract and to Enforce the Automatic Stay (the “Motion to Compel Order”), entered in the above-captioned bankruptcy case on the 17th day of September 2009, regarding Lehman Brothers Special Financing Inc. and its Affiliated

Debtors' (collectively, "Debtors") "Motion to Compel Performance of Metavante Corporation's Obligations Under An Executory Contract and To Enforce the Automatic Stay."

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

| Designation Number | Date of Filing | Docket Number | Description |
|---------------------------|-----------------------|----------------------|--|
| 1 | 5/29/09 | 3691 | Notice of Debtors' Motion, Pursuant to Sections 105(a), 362 and 365 of the Bankruptcy Code, to Compel Performance of Metavante's Obligations Under an Executory Contract and to Enforce the Automatic Stay |
| 2 | 6/15/09 | 3951 | Objection of Metavante to Debtors' Motion Pursuant to Sections 105(a) and 365 of the Bankruptcy Code, to Compel Performance of Obligations Under an Executory Contract and to Enforce the Automatic Stay |
| 3 | 6/15/09 | 3954 | Affidavit of Kirk T. Larsen in Support of Objection of Metavante to Debtors' Motion to Compel Performance of Obligations Under an Executory Contract and to Enforce the Automatic Stay |
| 4 | 6/15/09 | 3958 | Statement of Official Committee of Unsecured Creditors of Debtors in Support of Debtors' Motion to Compel Performance of Metavante's Obligations Under an Executory Contract to Enforce the Automatic Stay |
| 5 | 7/10/09 | 4326 | Statement of Ad Hoc Group of Lehman Brothers Creditors In Support of Debtors' Motion, Pursuant to Sections 105(a), 362 and 365 of the Bankruptcy Code, to Compel Performance of Metavante's Obligations under an Executory Contract an to Enforce the Automatic Stay |
| 6 | 7/13/09 | 4359 | Debtors' Reply in Support of Motion to Compel Performance of Metavante's Obligations Under Executory Contract and to Enforce Automatic Stay |
| 7 | 7/13/09 | 4373 | Joinder of Official Committee of Unsecured Creditors in Debtors' Reply in Support of Motion to Compel Performance of Metavante's Obligations Under Executory Contract and to Enforce Automatic Stay |
| 8 | 7/15/09 | 4433 | Transcript Regarding Hearing Held on 07/14/09 |
| 9 | 9/17/09 | 5209 | Order Pursuant to Sections 105(a), 362 and 365 of the Bankruptcy Code to Compel Performance of Contract and to Enforce the Automatic Stay |
| 10 | 9/17/09 | 5261 | Transcript Regarding Hearing Held on 09/15/09 |
| 11 | 9/25/09 | 5284 | Notice of Motion and Motion to Amend Metavante's Motion to Alter or Amend the Court's Order Granting Debtors' Motion to Compel Performance and Enforce the Automatic |
| 12 | 10/08/09 | 5400 | Notice of Metavante's Motion for an Order Staying the Effect of the Court's Order Granting Debtors' Motion to Compel and Enforce the Automatic Stay |
| 13 | 10/16/09 | 5457 | Letter to the Court from Debtors Regarding Metavante's Motion to |

| | | | |
|----|----------|------|--|
| | | | Alter or Amend the Court's Order Granting Debtors' Motion to Compel Performance and Motion to Stay the Effect of the Court's Order Granting Debtors' Motion to Compel Performance |
| 14 | 10/16/09 | 5538 | Letter to the Court from Metavante Regarding Metavante's Motion to Alter or Amend the Court's Order Granting Debtors' Motion to Compel Performance and Motion to Stay the Effect of the Court's Order Granting Debtors' Motion to Compel Performance |
| 15 | 10/22/09 | 5603 | Notice of Filing |
| 16 | 10/23/09 | 5631 | Transcript Regarding Hearing Held on 10/23/09 |
| 17 | 10/23/09 | 5615 | Order Denying Motion of Metavante to Alter or Amend the Court's Order Granting Debtors' Motion to Compel Performance and Enforce the Automatic Stay |
| 18 | 10/23/09 | 5617 | Order Denying Motion of Metavante's Motion to Stay the Effect of the Court's Order Granting Debtors' Motion to Compel Performance and Enforce the Automatic Stay |
| 19 | 10/23/09 | 5619 | Notice of Appeal by Metavante |
| 20 | 11/13/08 | 1498 | Notice of Debtor's Motion for an Order Pursuant to Sections 105 and 365 of the Bankruptcy Code to Establish Procedures for the Settlement or Assumption and Assignment of Prepetition Derivative Contracts |
| 21 | 11/26/08 | 1764 | Objection of Metavante to Debtors' Motion for an Order Pursuant to Sections 105 and 365 of the Bankruptcy Code to Establish Procedures for the Settlement or Assumption and Assignment of Prepetition Derivative Contracts |
| 22 | 12/16/08 | 2257 | Order Pursuant to Sections 105 and 365 of the Bankruptcy Code to Establish Procedures for the Settlement or Assumption and Assignment of Prepetition Derivative Contracts |
| 23 | 01/15/09 | 2557 | Supplemental Order Pursuant to Sections 105 and 365 of the Bankruptcy Code to Establish Procedures for the Settlement or Assumption and Assignment of Prepetition Derivative Contracts |
| 24 | 09/29/09 | 5292 | Third Supplemental Order Pursuant to Sections 105 and 365 of the Bankruptcy Code to Establish Procedures for the Settlement or Assumption and Assignment of Prepetition Derivative Contracts |
| 25 | 10/16/09 | 5544 | Fourth Supplemental Order Pursuant to Sections 105 and 365 of the Bankruptcy Code to Establish Procedures for the Settlement or Assumption and Assignment of Prepetition Derivative Contracts |

STATEMENT OF ISSUES ON APPEAL

1. Whether the Bankruptcy Court erred, as a matter of law, in treating the interest rate swap agreement between Lehman Brothers Special Financing Inc. ("LBSF") and Metavante (the "Metavante Swap Agreement") as an executory contract subject to the limitations sets forth in section 365(e)(1) of the Bankruptcy Code, rather than as a financial

2. Whether the Bankruptcy Court erred, as a matter of law, in holding that Metavante may not suspend performance under the Metavante Swap Agreement based upon the prepetition default triggered by the bankruptcy filing of Lehman Brothers Holdings Inc. (“LBHI”), Metavante’s Credit Support Provider under the Metavante Swap Agreement.
3. Whether the Bankruptcy Court erred, as a matter of law, in holding that Metavante may not suspend performance under the Metavante Swap Agreement based upon the prepetition default triggered by LBHI’s and LBSF’s failure to comply with the “Specified Indebtedness” provisions.
4. Whether the Bankruptcy Court abused its discretion by refusing to permit Metavante to submit evidence regarding LBHI’s and LBSF’s defaults and breaches under the Metavante Swap Agreement, and/or by failing to consider all of the relevant evidence proffered by Metavante.
5. Whether the Bankruptcy Court abused its discretion in refusing to permit Metavante to conduct discovery regarding the prepetition breach occasioned by LBSF’s and LBHI’s failure to comply with the “Specified Indebtedness” provision.
6. Whether the Bankruptcy Court erred, as a matter of law, in imposing a deadline on the termination of swap agreements under section 560 of the Bankruptcy Code.
7. Whether the Bankruptcy Court erred, as a matter of law, in refusing to apply applicable New York law on the impact of the failure of a condition precedent.
8. Whether the Bankruptcy Court erred, as a matter of law, in compelling Metavante, the nondebtor counterparty, to perform under the Metavante Swap Agreement without

9. Whether the Bankruptcy Court erred, as a matter of law, in awarding default interest to LBSF notwithstanding LBSF's own preexisting defaults under the Metavante Swap Agreement.
10. Whether the Bankruptcy Court abused its discretion in refusing to permit Metavante to challenge the calculation of default interest unilaterally chosen by LBSF under the Metavante Swap Agreement.

Dated at New York, New York, this 2nd day of November, 2009.

WHYTE HIRSCHBOECK DUDEK S.C.
555 East Wells Street, Suite 1900
Milwaukee, WI 53202
Telephone: (414) 273-2100
Facsimile: (414) 223-5000
Bruce G. Arnold
Daryl L. Diesing
Daniel J. McGarry

- And -

BAKER & HOSTETLER LLP
45 Rockefeller Plaza
11th Floor
New York, NY 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
Richard J. Bernard, Esq.

By: /s/ Richard J. Bernard

Richard J. Bernard

and

Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5304
Telephone: (202) 861-1500
Facsimile: (202) 861-1783
Donald A. Workman, Esq.

ATTORNEYS FOR METAVANTE
CORPORATION